



# NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

February 1, 2007

Chairman Hogen & Members  
National Indian Gaming Commission  
1440 L. Street, N.W. – 10<sup>th</sup> Floor  
Washington, D.C. 20005  
Fax: (202) 632-7066

RE: Publication Of The Revised Class II Technical Standards

Dear Chairman Hogen & Members of the Commission:

It has come to NIGA's attention that the Commission is considering significant revisions to the proposed Class II technical standards based on the recommendations of an ad hoc working group of game machine manufacturers which have developed a set of proposed revisions to the proposed rule. We have also been informed that the NIGC may decide not to issue the classification standards and issue only technical standards regulations. We believe Tribal governments should have an opportunity to comment on any significant amendments prior to the promulgation of any final rule on technical standards.

At present, we are not clear as to the Commission's actual plans in relation to these rulemaking activities. Under the circumstances, we will address both contingencies. If the Commission plans to proceed with both classification and technical standards regulations, we view it as essential that tribal governments have a full and fair opportunity to review both sets of regulations and offer additional comments, particularly since the two proposed rules are so closely related. If the NIGC plans only to proceed with technical standards, we view it as essential that tribal governments have a full and fair opportunity to review and comment on the final proposal.

While we are hopeful that the Commission's decision to allow the manufacturer's an opportunity for input produced worthwhile results that will ultimately accrue to the benefit of tribal governments, the Commission's ultimate responsibility is to carry out its mission on a government-to-government basis with representatives of tribal governments. Moreover, it is not at all unusual for federal agencies to publish multiple versions of the same proposed rule, particularly in rulemakings affecting substantial rights or economic impacts. In this case, both circumstances are present; hence we assert that due process and the APA "logical outgrowth" rule weigh in favor of the NIGC's re-publication of the technical standards for further comment after they are amended.

Sincerely,

Mark Van Norman  
Executive Director, NIGA

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